

8/25/66

7. APPLICATION FOR APPROVAL OF EXCHANGE OF LAND IN UPPER NEWPORT BAY, ORANGE COUNTY, BETWEEN THE IRVINE COMPANY AND THE COUNTY OF ORANGE - W.O. 4926.

Calendar Item 1 attached was discussed in detail, with the Executive Officer making the opening statement and summarizing the problem. He reported that following preparation of the calendar item, the following additional correspondence was received:

1. Resolution 6436 of the City of Newport Beach, adopted August 22, 1966, expressing the support of the City Council for the proposed land exchange in Upper Newport Bay;
2. Letter from Duvall Y. Hecht, President of United States Olympians, Southern California Chapter, concluding that it is their decision that the contemplated exchange of lands would be beneficial to the State of California, the County of Orange, and the citizens thereof;
3. Letter from Mr. Gus C. Patzer of Costa Mesa, Newport Bay area, which summarizes with a final sentence with respect to the proposed project: "Shame for even considering it!"

In summary, the staff of the Commission concluded that, absent a requirement in the statute for devoting all exchanged lands received by the County of Orange to a State-wide interest, i.e., if the project could be considered by Orange County and The Irvine Company only within the context of what is good for Orange County, there is no question whatsoever that the project would be an excellent one of benefit both to The Irvine Company and to the County of Orange and to the residents of Orange County. There appears, however, to be less than a majority opportunity for devoting such exchanged lands to projects of State-wide interest. Additionally, a technical problem exists in that the State Lands Commission is required by statute to find that the grant lands proposed to be exchanged by the County are no longer useful for commerce, navigation and fishing. One of the channels proposed for exchange and which, under the present plan, is proposed to be filled, is presently being used for navigation and is the site for the mooring of many boats. Therefore, the staff recommended that the Commission withhold its approval at this time and urge the County to explore alternative methods of developing this natural resource in the spirit of its trust in a manner to maximize the public use and benefit.

Oral presentations were then made by the following:

Favoring the Proposed Exchange:

Mr. Adrian Kuyper, County Counsel for the County of Orange

Mr. William Mason, President of The Irvine Company

Assemblyman Robert E. Badham from the California State Legislature, 71st District.

Mr. L. E. Cox, Vice Chancellor, Business and Finance, University of California, Irvine.

Mr. Paul J. Gruber, Mayor of the City of Newport Beach (who was accompanied by Councilmen Doreen Marshall and Robert Shelton; City Manager Harvey L. Hurlburt; Public Works Director Joseph Devlin; City Attorney Tully Seymour; and R. L. Patterson, the author of the Patterson Report, Civil Engineer and Tidelands and Marine Engineering Expert and Consultant.

Mr. John Killefer from Corona del Mar, Chairman of Committee Number 3 of the Orange County Grand Jury, which committee deals with special matters concerning lands owned by the County of Orange.

Mayor Willard T. Jordan, of the City of Costa Mesa, who read into the record a letter authorized by the City Council, pointing out the need for recreational facilities in Orange County.

Mr. Harry E. Bergh, representing the Orange County Coast Association--Tidelands Committee, who read into the record a Resolution of that Association supporting the proposed exchange.

Mr. James W. Berkshire, President of the Chamber of Commerce in Newport Beach, encompassing over 800 companies which are on record as favoring the proposed exchange.

Opposed to the Proposed Exchange:

Mr. Charles Baldwin, Committee Consultant for the Joint Legislative Committee on Tidelands.

Mr. Frank Robinson, a resident of Newport Beach, and Chairman of the Citizens for Conservation of Public Tidelands, who read into the record a lengthy letter giving reasons for opposition to the exchange.

Mr. J. Ogden Markel, a general contractor, and citizen and property owner of Santa Ana, who submitted for the record letters from Councilman Herrin of the City of Santa Ana, and from George E. Robinson of the South Main Improvement Association, all of whom are unalterably opposed to the exchange.

Mr. Jim Harrison, appearing as President of the Orange County Marine Dealers' Association, and also speaking for the Southern California Marine Association, which organizations, though not opposed to any beneficial land exchange, are opposed to the Master Plan for the development of Upper Newport Bay as now outlined and accepted by the County of Orange and The Irvine Company.

Mrs. Janice Boer of Santa Ana, who stated that at the request of the Mayor of Santa Ana she conducted an investigation and uncovered a lot of material, who claimed that the aims of the State and the aims of Orange County are diametrically opposed, and asked for a test of public opinion on the question.

Opposed to the Proposed Exchange (contd.)

Mr. John Cummings, Chairman of the Committee for the Protection of the Back Bay, who presented a sampling of a petition of 125 names of people living in Newport Beach, and most predominantly in the Back Bay area thereof, who oppose the proposed exchange.

Mr. Roger Watson, a retired industrial engineer of Newport Beach, who presented for the record a letter authorized by the Directors of the Bay Area Citizens Council, asking that the Lands Commission continue to study the matter on the basis that the proposed exchange is not the broadest and best use of the last and largest undeveloped inland bay in California.

Mr. Don Barton, a Director of the Citizens Council and President of Marina Park, Incorporated, an association of home owners in Newport Beach, who submitted a letter suggesting that the possibilities be explored for some kind of joint development of the Upper Bay Area by Newport Beach acting in concert with the State of California, and urging that the State's legislative committees continue to study the development of the Upper Bay in search of a plan which is in "harmony with the true spirit of the Tidelands Trust."

Mr. Grover Stephens, Professor of Biological Science, University of California at Irvine, who submitted for the record a letter in opposition signed by 22 residents, including the Professor and Chairman of Biology, the Professor of Business, and others on the staff at Irvine. These signators, however, did not represent the position of the University of California at Irvine on the subject of the exchange.

Mr. Larry Bacon, a resident of Costa Mesa, who stated that if the proposed exchange went into effect, he would like to be assured that the City of Newport Beach and the County of Orange are not permitted to restrict any further the access of the people of the County and of the State to the waters of Newport Bay.

Following the foregoing appearances, Mr. Adrian Kuyper, County Counsel for the County of Orange, who made the opening presentation in favor of the exchange, introduced, in rebuttal, two of the motions of the Orange County Chamber of Commerce favoring the exchange, one adopted by the Board of Directors on May 10, 1966, and the other adopted on April 13, 1964, and stated that the County had done the best it could to satisfy the people of the State of California as a whole.

Mr. Kenneth Sampson, Director of Harbors, Beaches and Parks for the County of Orange, then presented information about availability of State and Federal funds, and stated that a study had been authorized, but not yet completed, looking towards possible application for Federal funds for the navigation features in the proposed plan. He reported that, as an obligation under 1957 legislation, the County would bear the expense of filling the lands in question and then deeding the property to The Irvine Company.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

THE STATE LANDS COMMISSION WITHHOLDS ITS APPROVAL AT THIS TIME ON THE REQUEST BY ORANGE COUNTY FOR APPROVAL OF THE EXCHANGE OF LAND IN UPPER NEWPORT BAY, ORANGE COUNTY, BETWEEN THE IRVINE COMPANY AND THE COUNTY OF ORANGE, AND URGES THE COUNTY TO EXPLORE ALTERNATIVE METHODS OF DEVELOPING THIS NATURAL RESOURCE IN THE SPIRIT OF ITS TRUST AND IN A MANNER TO MAXIMIZE THE PUBLIC USE AND BENEFIT, WITH THE UNDERSTANDING THAT THE COMMISSION WILL AGAIN CONSIDER THIS MATTER WHEN FURTHER PROJECT DATA ARE PROPOSED BY THE COUNTY OF ORANGE AND THE CITY OF NEWPORT BEACH.

(For a complete verbatim report of the discussion on this item, see the reporter's transcript, copy of which is on file in the Los Angeles office of the State Lands Division.)

Attachment

Calendar Item 1 (3 pages)

8/25/66

1.

APPLICATION FOR APPROVAL OF EXCHANGE OF LAND IN UPPER NEWPORT BAY, ORANGE COUNTY, BETWEEN THE IRVINE COMPANY AND THE COUNTY OF ORANGE - W.O. 4926.

By statute of May 25, 1919 (Ch. 526/19) the Legislature approved "An Act granting certain tidelands and submerged lands of the State of California to the County of Orange in said state upon certain trusts and conditions". (See Exhibit "A".)

By statute of May 29, 1929 (Ch. 575/29) the Legislature approved an amendment to the grant, which provided that franchises and leases were not to exceed 50 years as opposed to 25 years as provided in the original legislation.

Title to the uplands surrounding the bay, three islands in the bay, and an area of the bay identified as Tideland Patent 204 covering approximately 243 acres is vested in the Irvine Company. The exact location of the lines to this patent was adjudicated in the Superior Court of the County of Orange by Judgment dated May 6, 1926, in the case of Orange County, California, Plaintiff, vs. The Irvine Company, a corporation, Defendant, Case Number 20436. The title to these lands has been in ownership of the company since 1901, as described more specifically in the said decree of 1926, subject to a public easement for commerce, navigation, and fishery.

Authorization to enable the County to negotiate an exchange of certain of its granted tidelands in exchange for lands of the adjoining upland owner was passed by the Legislature as Chapter 2044 of the Statutes of 1957. (See Exhibit "B".)

An exchange under this Act must have the approval and concurrence of the State Lands Commission, as provided in Section 3 as follows:

"That any and all of said portions of said lands hereinbefore referred to, which have been or which shall hereafter be improved, filled, and reclaimed, as hereinbefore provided, if and when so improved, filled, and reclaimed, may be irrevocably alienated and conveyed free of the public uses and trusts in said acts, by the said County of Orange, with the approval and concurrence of the State Lands Commission, to the owner or respective owners of the uplands lying contiguous thereto in exchange for lands of such owner or owners necessary or desirable for the improvement, development and conduct of said harbor upon a finding by the State Lands Commission that the lands located in the area commonly known as Upper Newport Bay which are to be exchanged are no longer useful for navigation, commerce, and fishing, and that the lands to be received in exchange are at least of equal value thereto. The lands received by the county in exchange shall be used by the county only for purposes of state-wide interest. Upon any conveyance as herein provided all right, title, and interest of the State and said County of Orange in the land exchanged shall vest in the grantee or grantees thereof."

CALENDAR ITEM 1. (CONTD.)

By Resolution No. 65-44, dated January 13, 1965, the Orange County Board of Supervisors approved an agreement with the Irvine Company to exchange portions of the granted public tidelands in Upper Newport Bay for privately owned islands and uplands.

In the exchange agreement the County would receive a total of 450.3 acres, made up of 266.5 acres of Irvine upland and 183.8 acres of Irvine tideland ownership. The County proposes to utilize approximately 177 acres for parks, while the remaining 273 acres would be waterways.

The Irvine Company would receive a total of 157.1 acres, comprised of 97.9 acres of filled and reclaimed tidelands and submerged lands, and release of the public easement on 59.2 acres of Tideland Patent No. 204.

The exchange would alter the topography and configuration of the bay in that the three islands would be removed and filling and dredging at selected areas along the shoreline would take place. A main channel would be dredged to a design depth of 10 feet below Mean Lower Low Water and would create a 300-foot-wide navigable channel to the northerly end of the bay. Certain portions of the present tidelands and the balance of Tideland Patent No. 204 would be filled, thus enhancing development potential of the adjacent uplands.

An independent appraisal report furnished by the County indicates an apparent dollar advantage to the County as follows:

Total Value Irvine Parcels	\$19,466,000
Total Value County Parcels	<u>11,453,500</u>
Advantage to County	\$ 8,012,500

A staff review of the appraisal, although not in accord with an \$8 million advantage to the County, has affirmed that there would remain a significant advantage dollarwise in favor of the County.

Based solely on land appraisal values, the statutory requirement for equality in the values to be exchanged would be more than met. However, the ultimate outcome would be a distinct loss in value when measured in the scale of State-wide public interest. The reasons for this conclusion are:

1. It cannot be established clearly that all the lands which are to be exchanged are no longer useful for navigation, commerce, and fishing.
2. Realignment and relocation of the public waterways as proposed would diminish the greater public use which could be developed otherwise.
3. Removing the burden of easement and enlarging the Irvine lands into usable private areas would be a purely local benefit which would convert public waterways into a captive waterway primarily for the use of the private residential boat owners who would occupy the created area and dominate the bay.

CALENDAR ITEM 1. (CONTD.)

4. The project would create commercial areas completely privately controlled which could add to the preponderant private domination of the bay.

Therefore, in consideration of the foregoing,

IT IS RECOMMENDED THAT THE STATE LANDS COMMISSION WITHHOLD ITS APPROVAL ON THE REQUEST BY ORANGE COUNTY AT THIS TIME AND URGE THE COUNTY TO EXPLORE ALTERNATIVE METHODS OF DEVELOPING THIS NATURAL RESOURCE IN THE SPIRIT OF ITS TRUST IN A MANNER TO MAXIMIZE THE PUBLIC USE AND BENEFIT.